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CUSTOMER NO.: 24498

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Keith Reynolds Wehmeyer
Serial Number: 09/981,000
Atty. Docket: RCA 89,027
Filing Date: December 3, 2001
For: DBS FEATURE EXTENSION ARCHITECTURE
Art Unit: 2623
Examiner: Jason P. Salce

REPLY BRIEF

**Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450**

Sir:

In response to the Examiner's Answer dated May 15, 2007, Appellant hereby submits a Reply Brief in accordance with 37 C.F.R. §41.41 for the above-referenced application.

Response to Examiner's Answer

In response to the Examiner's Answer of May 15, 2007, Appellant maintains that claims 1-2 and 5 are allowable under 35 U.S.C. §103(a) over U.S. Patent No. 5,801,787 issued to Schein et al. (hereinafter, "Schein") in view of U.S. Patent No. 6,058,430 issued to Kaplan (hereinafter, "Kaplan"), and that claims 3-4 are allowable under 35 U.S.C. §103(a) over Schein in view of Kaplan, and further in view of U.S. Patent No. 6,219,839 issued to Sampsell (hereinafter, "Sampsell").

In the Examiner's Answer dated May 15, 2007, the Examiner continues to allege that it would have been obvious to a person of ordinary skill in the art to modify the cable box 16 of Schein (the alleged "stand-alone internet receiver" of claim 1) to further receive internet information through the vertical blanking interval ("VBI"), as taught by Kaplan (see page 5 of the Examiner's Answer).

In response, Appellant maintains that a person of ordinary skill would have absolutely no motivation to modify Schein using Kaplan in the proposed manner since such a modification would interfere with cable box receiver 16 of Schein from using the VBI to receive program guide information, and thereby at least partially defeat one of the primary objectives of Schein, namely the ability to receive and process program guide information from multiple sources including cable box 16. As such, Appellant maintains that the proposed modification of Schein is the result of impermissible hindsight reconstruction.

On page 7 of the Examiner's Answer, the Examiner alleges that Kaplan teaches receiving not only internet data via the VBI, but further teaches that additional data along with the internet data can be received. In particular, the Examiner points to language in column 6, line 66 through column 7, line 3 of Kaplan which state:

"The fourth field (68) of the block (60) is an optional information text field and is used to provide a descriptive, informational or promotional message to the viewer **about the Internet site** associated with the broadcast." (emphasis added)

As indicated above, Kaplan teaches that the VBI includes an optional information text field which may be used to provide “a descriptive, informational or promotional message to the viewer about the Internet site” (whose address is encoded in another field of the VBI). In the Examiner’s Answer, the Examiner alleges that this “descriptive, informational or promotional message to the viewer about the Internet site” represents electronic program guide data (see page 8 of the Examiner’s Answer). Based on this allegation, Appellant assumes that the Examiner has now taken the position that Kaplan teaches the ability to receive both internet data and program guide information via the VBI.

In response, Appellant notes that the “descriptive, informational or promotional message ... about the Internet site” referred to by Kaplan is not “program guide information” as claimed, and would not be interpreted as such by a person of ordinary skill in the art. Rather, a person of ordinary skill in the art would interpret this “message ... about the Internet site” as simply that – a message about an Internet site. In contrast to a “message ... about the Internet site” as disclosed by Kaplan, “program guide information” as claimed refers to something entirely different in the digital world. Issues related to “program guide information” (a.k.a., television schedule information) are described, for example, in column 1, lines 11-53 of Schein. In particular, “program guide information” provided from sources such as the well-known StarSight™ onscreen guide system may include television listings for well over 100 channels, as well as provide capabilities such as theme searching, VCR programming, detailed program information, and other functionality. As such, a person of ordinary skill in the art would interpret a “message ... about the Internet site” as disclosed by Kaplan as something entirely different than “program guide information” as claimed. Accordingly, the Examiner’s allegation that Kaplan teaches the ability to receive both internet data and program guide information via the VBI is incorrect.

In the Appeal Brief, Appellant noted that cable box 16 of Schein (the alleged “stand-alone internet receiver”) fails to perform all of the recited steps provided by the

“stand-alone internet receiver” of claim 1. In particular, as indicated on pages 3-4 of the Examiner’s Answer, the Examiner continues to allege that DBS receiver 18 of Schein corresponds to the “stand-alone digital video receiver” of claim 1. However, Appellant notes that cable box 16 of Schein (the alleged “stand-alone internet receiver”) does not receive program guide information from DBS receiver 18 (the alleged “stand-alone digital video receiver”), as required by claim 1. Accordingly, cable box 16 of Schein (the alleged “stand-alone internet receiver”) fails to perform the step of “receiving the second program guide information from the stand-alone digital video receiver” as claimed.

Also noted in the Appeal Brief, cable box 16 of Schein (the alleged “stand-alone internet receiver”) fails to integrate program guide information received from DBS receiver 18 (the alleged “stand-alone digital video receiver”) with its own received program guide information. Rather, column 4, lines 49-53 of Schein teach that coordinator 14, not cable box 16 (the alleged “stand-alone internet receiver”), receives and arranges program schedule information. Accordingly, cable box 16 of Schein (the alleged “stand-alone internet receiver”) also fails to perform the step of “integrating the first program guide information with the second program guide information to form the combined program guide” as claimed.

In response to the foregoing arguments, the Examiner alleges on page 9 of the Examiner’s Answer:

“The examiner note [sic] that nowhere in claim 1 requires that the stand-alone digital receiver sends second program information to the stand-alone Internet receiver, as well as requiring that the cable box 16 integrates the first and second program guide data to form a combined program guide.”

Appellant disagrees and points out that claim 1 clearly requires that the stand-alone digital receiver sends second program guide information to the stand-alone internet receiver, and that the stand-alone internet receiver (which allegedly corresponds to cable box 16 of Schein) integrates the first and second program guide information to form a combined program guide. In particular, Appellant notes that the

steps of claim 1 are clearly drafted from the perspective of the "stand-alone internet receiver." This is evidenced, for example, by the preamble of claim 1 itself:

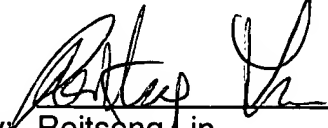
"In a stand-alone internet receiver ... a method for forming a combined program guide comprising steps of" (emphasis added)

This is also evidenced, for example, by the step of:

"receiving the second program guide information from the stand-alone digital video receiver" (emphasis added)

As indicated above, and contrary to the Examiner's allegations, claim 1 clearly requires that the stand-alone digital receiver sends second program guide information to the stand-alone internet receiver, and that the stand-alone internet receiver integrates the first and second program guide information to form a combined program guide. Accordingly, based on the Examiner's interpretation of Schein, the proposed combination of Schein and Kaplan fails to teach or suggest all of the steps of claim 1. In view of the foregoing remarks/arguments, Appellant respectfully requests that the Board reverse the rejection of claims 1-5, and that this application be passed to issue.

Respectfully submitted,


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I hereby certify that this amendment is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Mail Stop Appeal Brief, Commissioner for Patents, Alexandria, Virginia 22313-1450 on:

7/11/07
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